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101ST CONGRESS
2d Session

SENATE

REPORT
101-535

DIRECTING THE SECRETARY OF THE INTERIOR TO TRANSFER ALL RIGHT, TITLE, AND INTEREST OF THE UNITED STATES IN CERTAIN PROPERTY ON SAN JUAN ISLAND, WASHINGTON, TO THOSE PERSONS WHO OWN SUCH PROPERTY BECAUSE OF AN ERRONEOUS SURVEY

OCTOBER 17 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2566]

The Committee on Energy and Natural Resources to which was referred the Act (H.R. 2566) to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. On page 2, beginning on line 11, strike the word "on" and everything that follows to the end of line 14, and insert in lieu thereof the following: "on a map to be prepared by the Secretary of the Interior pursuant to section 2 of this Act.".

2. On page 2, after line 24, insert the following new section:

SEC. 2. SURVEY AND MAP.

Within one year after the date of enactment of this Act, the Secretary, acting through the Director of the Bureau of Land Management, shall complete a survey of the lands granted to the State by the 1921 Act, and shall prepare a map detailing those portions of the lands granted to the State that have been encroached upon: *Provided,* That not more than 50 per centum of the cost of such survey shall be paid by the Federal Government.

3. On page 3, line 1, strike "SEC. 2. EXEMPTION." and insert in lieu thereof "SEC. 3. EXEMPTION, DISCLAIMER AND CONDITIONS.".

49-010

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4. On page 3, line 2, strike "Subject to the provisions of section 3(b)," and insert in lieu thereof "(a) Subject to the limitation in subsection (c),".

5. On page 3, delete line 9 in its entirety.

6. On page 3, lines 10 and 11, delete "(a) Subject to the provisions of subsection (b) of this section," and insert in lieu thereof "(b) Subject to the limitation of subsection (c),".

7. On page 3, line 13, strike "the date of enactment of this Act," and insert in lieu thereof "the map is prepared pursuant to section 2,".

8. On page 3, strike lines 16 through 18, and insert in lieu thereof the following: "(c)(1) Subsections (a) and (b) of this section shall not take effect unless, within one year after the map is prepared pursuant to section 2, the State and the University have entered into a".

9. On page 3, line 21, strike "section 1(2)" and insert in lieu thereof "section 2".

10. On page 4, line 14, strike "section 1(2)" and insert in lieu thereof "section 2".

Purpose of the Measure

The purpose of H.R. 2566, as ordered reported, is to disclaim any interest of the United States in certain lands on San Juan Island, Washington, which were conveyed to the State of Washington and have been encroached upon by private parties.

Background and Need

By a 1921 Act of Congress, the United States granted military reserve lands to the State of Washington in San Juan County, Washington, to be used by the University of Washington for a marine sciences laboratory. The Act contained a reverter to the United States should the lands be used for any purpose other than those originally specified in the Act.

The 1921 Act was tied to land surveys undertaken in 1874 by the Army and the General Land Office (the predecessor to the Bureau of Land Management), that defined the boundaries of the military reserve. However, in 1919, the county surveyor completed a survey which placed the boundary of the military reserve further east than had the original surveys. Subsequent subdivisions and development in this area were based on the 1919 line. As a result, there have been a number of encroachments on the lands granted to the State of Washington by the 1921 Act.

In 1975, the university sought assistance from the BLM regarding how to deal with the encroachments and the associated title problems. The State of Washington cannot convey the encroached-upon lands to the occupants because an attempt to do so would cause the reversion of the lands to the United States under the terms of the 1921 Act.

H.R. 2566 directs the Secretary of the Interior to disclaim all right, title and interest in the encroached-upon lands, allowing the State of Washington to convey them to the occupants of the properties.

Legislative History

H.R. 2566 passed the House of Representatives on March 20, 1990. The Subcommittee on Public Lands, National Parks and Forests held a hearing on H.R. 2566 on September 26, 1990.

At the business meeting on October 10, 1990, the Senate Committee on Energy and Natural Resources ordered H.R. 2566, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on October 10, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 2566 if amended, as described herein.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin*	
Mr. Rockefeller*	
Mr. McClure	
Mr. Hatfield *	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. McConnell	

* Indicates voted by proxy.

Committee Amendments

During the consideration of H.R. 2566, the Committee adopted several technical and conforming amendments and one substantive amendment.

As introduced, H.R. 2566 directed the Secretary of the Interior to disclaim all interest in those lands conveyed by the United States to the State of Washington which, based on a map prepared by the Secretary of the Interior, have been encroached upon by other parties. In response to concerns raised by the Bureau of Land Management at the Subcommittee hearing, the Committee amendment directs the Secretary to complete a new survey and prepare a new map of the encroached-upon lands based on that survey. The amendment also requires that the United States pay only one-half of the survey costs.

A more complete discussion of the amendments is found in the Section-by-Section Analysis portion of this report.

SECTION-BY-SECTION ANALYSIS

Section 1 sets forth the definitions of terms used in this Act.

Section 2 provides that within 1 year after the date of enactment of this Act, the Director of the Bureau of Land Management is to prepare a survey of those lands conveyed to the State pursuant to the 1921 Act and a map of those lands which have been encroached upon. The Federal Government shall pay no more than 50 percent of the costs of the survey.

Section 3(a) provides that if the requirements of section 3(c) are met, the reverter contained in the 1921 Act will not apply to those lands identified as encroached upon by the survey and maps prepared pursuant to section 2.

Section 3(b) provides that if the requirements of section 3(c) are met, 1 year after the map is prepared pursuant to section 2, the United States will disclaim all right, title and interest to the encroached lands and the title will vest in the University of Washington.

Section 3(c) directs that the provisions of sections 3(a) and 3(b) will not take effect unless within one year after the map is prepared pursuant to section 2, the State of Washington, the University of Washington and the Secretary of the Interior have entered into a binding agreement which specifies the obligations of the University and the State regarding the conveyance of the encroached lands to the current occupants of such lands.

Section 4 provides that the map prepared pursuant to section 2 shall be made available to the public.

Section 5 amends the 1921 Act by adding a new section which will prevent any lands which were conveyed to the State of Washington pursuant to the Act which are contaminated with hazardous materials from reverting to the United States.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2566, an act to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on October 10, 1990. We estimate that enactment of H.R. 2566 would result in no significant costs or savings to the federal government or to state or local governments.

H.R. 2566 would vest title to certain federal land on San Juan Island in the University of Washington; this land would be identified in a survey to be conducted by the Bureau of Land Management (BLM). The land would be exempted from current restrictions that prevent recipients of federal land from transferring it to other

parties. The effect of these changes would be to allow the State of Washington and the university to transfer ownership of the land to the current occupants. Because of faulty surveys conducted early in this century, federal land granted to the State of Washington was erroneously subdivided and developed for private homesites.

The state and the university would be required to share in the survey costs and to pay to the United States any profits they receive from selling the land to the occupants. Finally, H.R. 2566 would protect the U.S. government from liability for any contamination of the land resulting from disposal of hazardous or toxic materials.

Based on information from the BLM, CBO estimates that enactment of H.R. 2566 would not result in significant additional costs to the federal government. Any receipts that would accrue to the federal government from the sale of the land are not expected to be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2566. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2566, as reported.

EXECUTIVE COMMUNICATIONS

On September 10, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 2566. These reports had not been received at the time the report on H.R. 2566 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to discuss H.R. 2566.

The Bureau of Land Management (BLM) has no objection to the enactment of H.R. 2566 if it is amended as we suggest. A summary of the bill is attached to the statement.

Under the Act of August 23, 1921, Congress granted to the University of Washington certain properties in San Juan County, Wishington, for the operation of a marine sciences laboratory. The Act contained a reverter to the United States, should the lands be used for any purpose other than those originally specified in the Act.

As a result of an erroneous private survey for a residential subdivision, there are now 14 or more individual parcels of land, encompassing approximately 13 acres, encroaching along the west boundary of the land patented to the University of Washington that are occupied by persons who claim ownership. As the land is not being used for the purposes set out in the 1921 Act, legal title to the land may have reverted to the United States, even though the change in use was an unintentional violation of the provisons of the 1921 Act. the BLM has been working with the University for several years to try to resolve the problem and has not issued a Decision of Divestiture to formally notify the State of the reversion.

We recognize that when the House passed H.R. 2566, it distinguished the lands covered by H.R. 2566 as "encroached lands" identified on "a map", in order to avoid the estimated $24,000 cost of a BLM resurvey. However, the map referred to in the bill does not exist and cannot be prepared without first completing a dependent resurvey of those lines necessary to identify the actual boundaries of the area that is called "encroached land". Without a dependent resurvey, the United States would be disclaiming title to an undefined area which would still leave the problems of clouded title unresolved. A preliminary investigation of the area has been conducted, but there is insufficient information and evidence of the earlier surveys available to prepare a document that could transfer title to the lands. If the intent of the bill is to be achieved, it is imperative that a dependent resurvey of the area be completed. The end product of the dependent resurvey will be a cadastral survey plat that is officially approved and filed in the Federal records and will be the legal document from which land can be identified and conveyed.

For this reason, we recommend that references to the map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990 be deleted from the bill. Instead, the bill should refer to a "Cadastral Survey Plat based upon a BLM Dependent Resurvey".

The bill should provided for the claimants to pay for the survey. In addition, the bill makes no provision for payment of administrative costs. We urge that a provision be added to require such payment. As we mentioned in testimony before the House Interior Subcommittee on National

Parks and Public Lands, unless the bill is so amended, the Administration will oppose its enactment.

Finally, we strongly support section 5 of the bill which would prevent any lands that are contaminated with hazardous materials from reverting to the United States.

This concludes my statement. I will be pleased to answer any questions you may have.

SUMMARY OF H.R. 2566, AN ACT

Section 1 would provide definitions for a number of terms used in the bill. One of those terms is "encroached lands", defined as those portions of the lands granted to the State of Washington by the Act of August 23, 1921, that are designated as "Encroached Lands" on a map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990, and comprising approximately 13 acres.

Section 2 would exempt the encroached lands from the provisions of the 1921 Act relating to the right of the United States to reclaim the lands if they are needed for military purposes, from the reversionary interest clause in the 1921 Act, and from the provisions related to hazardous materials which would be added to the 1921 Act by section 5 of H.R. 2566.

Section 3(a) would provide that the United States disclaims all right, title, and interest in the encroached lands, and would provide that all right, title, and interest of the United States in such lands shall vest in the University of Washington one year after the date of enactment of the bill.

Section 3(b) would provide that the exemptions and vesting of the lands could not take effect unless, within 1 year after enactment of H.R. 2566, the State and the University have entered into a binding agreement with the Secretary of the Interior regarding the lands. Under that agreement, the State and the University would have to agree to accept as accurate and conclusive the map referred to in the bill; not to attempt to convey or otherwise transfer the encroached lands to any party other than the occupants; and to pay the Secretary any amounts received as consideration for conveyance of some or all of the encroached land in excess of reasonable costs incurred by the University and the State incident to conveying the land. The Secretary would be required to retain all such payments and, subject to appropriation, use the moneys for the management of public lands managed by the Bureau of Land Management.

Section 4 would require the map of the encroached lands to be available for public inspection in the offices of the Secretary of the Interior and the BLM State Director for the State of Washington. The Secretary would be required to transmit copies of the map to the University and to appropriate officials of the State and of San Juan County, Washington.

Section 5 would amend the 1921 Act to provide that, notwithstanding any other provision of that Act, any land granted or conveyed to the State by this Act that is or shall become contaminated with hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, or that has

been used for purposes that the Secretary finds may result in the disposal, placement or release of any hazardous substance shall not, under any circumstances, revert to the United States. In such instances, the State would be liable to pay the Secretary the fair market value of the land, including the value of any improvements as of the date of conversion of the land to the nonconforming purpose. The Secretary would be required to retain all such payments and use the moneys for the management of public lands.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 2566, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT Providing for a grant of land to the State of Washington for a biological station and general research purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title and fee to portions of sections one, two, eleven, and twelve of township thirty-five north, of range three west of the Willamette meridian, being a military reservation at San Juan Island, in the county of San Juan, State of Washington, containing about four hundred and eighty-four acres, be, and the same are hereby, granted, subject to the conditions and reversion hereinafter provided for, to the State of Washington for the use of the University of Washington, for the purpose of a biological station and for general university research purposes; subject, however, to the right of the United States to at any and all time and in any manner assume control of, hold, use, and occupy without license, consent, or leave from said State or university any or all of said land for any and all military, naval, or lighthouse purposes, freed from any conveyances, charges, encumbrances, or liens made, created, permitted, or sanctioned thereon by said State or university: *Provided*, That the United States shall not be or become liable for any damages or compensation whatever to the said State of Washington or the University of Washington for any future use by the Government of any or all of the above-described land for any of the above-mentioned purposes: *Provided further*, That if said lands shall not be used for the purposes hereinabove mentioned the same or such parts thereof not so used shall revert to the United States.

Sec. 2. (a) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the State of Washington by this Act is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601)), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any circumstances, revert to the United States.

(b) If lands granted or conveyed to the State by this Act shall be used for purposes that the Secretary of the Interior finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State shall be liable to pay to the Secretary of the Interior, on behalf of the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.

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